

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.36320 of 2012

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Yogendra Singh, Son of Late Dhanpat Singh, Resident of Village-Haujpura,
P.S. and District-Vaishali.

.... Petitioner/s

Versus

1. State of Bihar.

2. Nurul Haque, Son of Late Md. Isha, Resident of Village-Bahadurpur,
P.S.- Pupari, District-Sitamarhi.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Ajay Kumar Thakur
Mr. Nilesh Kumar
Mr.Imteyaz Ahmad

For the Opposite Party no.1 : Mrs. Veena Kumari Jaiswal, APP

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

4 09-04-2015

Heard learned counsel appearing on behalf of the petitioner and learned Addl.P.P. appearing on behalf of the State of Bihar. However, despite valid service of notice, none is appearing on behalf of the opposite party no.2, though the name of his counsel is printed in the daily cause list.

The petitioner has filed the present application under Section 482 Cr.P.C. for quashing the order dated 22.02.2012 passed in Complaint Case No.281 of 2006 by the learned S.D.J.M., Pupri, Sitamarhi, whereby the petition filed on behalf of the petitioner for dropping the criminal prosecution against him in the light of the judgment and order dated 29.01.2011 passed in Cr.Misc.No.18624 of 2008 (Annexure-3) by a Bench of this Court has been rejected.

Apparently, the opposite party no.2 filed a complaint case No.281 of 2006 arraying altogether eight persons as accused. The petitioner, being the Revenue Karamchari at the relevant time,



has also been made accused with respect to the land under dispute between the parties. In the aforesaid complaint case filed by the opposite party no.2, after holding an enquiry under Section 202 Cr.P.C., by the order dated 31.08.2007, cognizance was taken under Sections 420, 182, 204, 213, 466 and 352 of the Indian Penal Code by the learned S.D.J.M., Pupri, Sitamarhi and all the eight accused persons including the petitioner were summoned. Md. Hasim and his four sons, who were accused in the aforesaid complaint case, being aggrieved by the aforesaid order dated 31.08.2007, filed Cr.Misc.No.18624 of 2008 with a prayer for quashing the order taking cognizance and their consequential criminal prosecution. In that case, the complainant was impleaded as opposite party no.2. The aforesaid Cr.Misc. case was finally heard and was allowed by a Bench of this Court (Coram: Rajendra Kumar Mishra, J.) by the order dated 29.01.2011. The conclusion arrived at in that Cr.Misc.case is being produced hereinebelow:-

“Moreover, even if the allegations, made in the complaint petition, are taken at their face value and are accepted in their entirety, the same do not prima facie constitute any criminal offence rather the dispute appears to be of civil in nature. As such the impugned order dated 31.08.2007 passed by the Sub Divisional Judicial Magistrate, Pupri, Sitamarhi, in Complaint Case No.281 of 2006 (T.R.No.1453 of 2007), summoning the accused-petitioners, which is impugned in the present application, appears to be an abuse of the process of the court.”

After recording the aforesaid conclusion, the impugned order dated 31.08.2007 taking cognizance was quashed, but only with respect to the petitioners of that case.

Learned counsel appearing on behalf of the petitioner

submits that the petitioner could not challenge the order taking cognizance earlier, but once he came to know about the aforesaid judgment and order dated 29.01.2011 (Annexure-3) he filed a petition for dropping the entire criminal prosecution. It is contended by him that so far the order dated 29.01.2011 passed in Cr.Misc.No.18624 of 2008 (Annexure-3) is concerned, that has attained its finality. Therefore, he submits that the learned Magistrate ought to have dropped the entire criminal prosecution against the petitioner also.

As indicated above, none is appearing on behalf of the opposite party no.2, though he has entered appearance through his learned counsel.

Learned Addl.P.P. appearing on behalf of the State of Bihar has fairly conceded that in the light of the previous order dated 29.01.2011 the criminal prosecution against the petitioner is also liable to be quashed.

After having heard the parties, this Court is of the opinion that in view of the conclusion arrived at by a co-ordinate Bench of this Court while passing the order dated 29.01.2011(Annexure-3), the criminal prosecution against all the remaining accused persons including the petitioner is liable to be quashed, as the criminal prosecution against five other persons has already been quashed by this Court.

For the reasons recorded above, the impugned order dated 22.2.2012 passed in Complaint Case No.281 of 2006 by the learned S.D.J.M., Pupri, Sitamarhi is hereby set aside and the criminal prosecution of the petitioner and other remaining two accused persons, who are not a party before this Court, with respect to aforesaid Complaint Case No.281 of 2006 is quashed.

The learned Magistrate is hereby directed to drop the entire criminal prosecution with respect to the aforesaid complaint case filed by the opposite party no.2.

The present application stands allowed.

(Birendra Prasad Verma, J)

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